

ISMAIL J. RAMSEY (CABN 189820)  
United States Attorney  
MICHELLE LO (NYRN 4325163)  
Chief, Civil Division  
JEVECHIUS D. BERNARDONI (CABN 281892)  
Assistant United States Attorney

1301 Clay Street, Suite 340S  
Oakland, California 94612-5217  
Telephone: (510) 637-3721  
Facsimile: (510) 637-3724  
jevechius.bernardoni@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW MORRIS,

Plaintiff,

v.

BOARD OF TRUSTEES OF THE CALIFORNIA  
STATE UNIVERSITY, *et al.*,

Defendants.

Case No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION**

**PLEASE TAKE NOTICE that on this day Case No. 23-cv-28627**, currently pending before the Superior Court of California, County of Alameda, is being removed to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1442(a)(1), on behalf of federal defendants, Kiran Ahuja, in her official capacity as the director of the U.S. Office of Personnel Management (“Ahuja”);<sup>1</sup> the U.S. Office of Personnel Management (“OPM”); Shalanda Young, in her official capacity as the director the U.S. Office of Management and Budget (“Young”); U.S. Office of Management and Budget (“OMB”); Christopher Wray, in his official capacity as the director of the Federal Bureau of Investigation (“Wray”); and the Federal Bureau of Investigation (“FBI,” and, collectively with Ahuja,

<sup>1</sup> The complaint misspells Kiran Ahuja’s name as “Kiran Abuja.”

OPM, Young, OMB, and Wray, “Federal Defendants”). The grounds for removal are as follows:

1. On July 18, 2023, *pro se* plaintiff Matthew Morris (“Plaintiff”) filed a complaint alleging claims against 30 named defendants and 10 Does in the Superior Court of California, County of Alameda.

A copy of the complaint (hereinafter “Complaint”) is attached hereto as Exhibit 1.

2. The above-captioned lawsuit purportedly relates to Plaintiff’s time at the California State University, East Bay (“CSU East Bay”) as a student and employee. Plaintiff claims that he was the lead research assistant for CSU East Bay Assistant Professor Anndretta Wilson.

3. Although each of the Complaint’s 29 causes of action is alleged against “All Defendants,” including Federal Defendants, for purported violations of state and federal law, the Complaint includes no well-pleaded factual allegations regarding Federal Defendants. Instead, the Complaint alleges—without supporting facts—that:

- FBI and Wray “failed to prevent harm since Plaintiff reported harm that crossed state lines to FBI in 2021-2022” and that FBI and Wray “failed oversight of Title IX employees to ensure that they followed federal Title IX laws” (Complaint ¶¶ 25, 30);
- OMB “failed to oversee federal employees at CSU Eastbay so that they would be at work to stop harm” (*id.* ¶ 27); and
- OPM “failed to oversee employees at CSU Eastbay to ensure that scholarships were paid and that employees were reporting into their positions and completing their duties of reporting personnel files, timesheets, and records” (*id.* ¶ 28).

4. OPM and Ahuja, in her official capacity, were served with the Summons and Complaint on August 8, 2023.

5. To date, OMB and Young, in her official capacity, have not been served with the Summons and Complaint.

6. To date, FBI and Wray, in his official capacity, have not been served with the Summons and Complaint.

7. In addition, Plaintiff failed to serve the Complaint and Summons on Federal Defendants in accordance with Federal Rule of Civil Procedure 4(i).

8. The action is removable to federal district court under 28 U.S.C. § 1442(a)(1) because in

1 seeking relief against the Federal Defendants, Plaintiff is suing the “United States or any agency thereof  
2 or any officer . . . of the United States or of any agency thereof, in an official or individual capacity, for  
3 or relating to any act under color of such office . . . .”

4 9. “Under the federal officer removal statute, suits against federal officers may be removed  
5 despite the nonfederal cast of the complaint; the federal question element is met if the defense depends on  
6 federal law.” *Jefferson County, Ala. v. Acker*, 527 U.S. 423, 431 (1999) (addressing removal under  
7 28 U.S.C. § 1442(a)(3)). Section 1442 is broadly construed to favor removal in the case of actions against  
8 federal officers. *See Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006). A broad  
9 interpretation furthers one of the key purposes of the statute: to allow federal officers to litigate in federal  
10 court colorable defenses arising out of their duty to enforce federal law. *See Willingham v. Morgan*, 395  
11 U.S. 402, 406-07 (1969). Congress amended Section 1442 in 2011 because it “felt that the courts were  
12 construing the statute too narrowly.” *Goncalves v. Rady Children’s Hosp. San Diego*, 865 F.3d 1237,  
13 1250 (9th Cir. 2017); *see also Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) (noting  
14 that the 2011 amendment to Section 1442(a)(1) “broaden[ed] the universe of acts that enable federal  
15 removal such that there need be only a *connection or association* between the act in question and the  
16 federal office.”) (alteration and emphasis in original, citations and quotation marks omitted).

17 10. An agency or an officer of an agency of the United States may remove under  
18 Section 1442(a)(1) where she (1) “raise[s] a colorable federal defense” and (2) “establish[es] that the suit  
19 is “for a[n] act under color of office.” *Jefferson County*, 527 U.S. at 431 (quoting 28 U.S.C. § 1442(a)(3)  
20 (emphasis in original).<sup>2</sup> To satisfy the second requirement, “the officer must show a nexus, a causal  
21 connection between the charged conduct and asserted official authority.” *Id.* (cleaned up). Courts do not  
22 require “an airtight case on the merits” to show either the required causal connection or the colorable  
23 federal defense but instead credit the officer’s “theory of the case for purposes of both elements of [the]  
24 jurisdictional inquiry.” *Id.* at 432.

25 11. Federal Defendants meet the test for removal set forth in *Jefferson County*. First, although  
26

27 <sup>2</sup> While the *Jefferson County* Court quoted 28 U.S.C. § 1442(a)(3) for this standard, it further noted  
28 that “[o]ther subsections of § 1442 establish similar removal rights for other federal officers.” *Jefferson*  
*County*, 527 U.S. at 430 n.3.

1 the allegations regarding Federal Defendants are conclusory, the Complaint suggests that Federal  
2 Defendants somehow failed to act in their official capacity to prevent harm from occurring to Plaintiff.  
3 Complaint ¶¶ 25, 27-28, 30, 88-89, 92-95. Second, Federal Defendants have colorable defenses to  
4 Plaintiff's claims under federal law. For example, (1) the state court lacked jurisdiction over Plaintiff's  
5 claims against federal actors, (2) the Complaint does not establish that the federal government waived its  
6 sovereign immunity as to any of Plaintiff's claims, (3) Plaintiff did not exhaust the administrative remedies  
7 required under federal law, and (4) as mandated by federal statutes, Plaintiff sued the incorrect federal  
8 defendants. With respect to the second requirement, "colorable" is interpreted broadly because "one of  
9 the most important reasons for the removal is to have the validity of the defense of official immunity tried  
10 in a federal court." *Jefferson County*, 527 U.S. at 431; *see also Willingham*, 395 U.S. at 406-07.

11 12. A copy of this Notice of Removal is being filed with the Clerk of the Superior Court for  
12 the County of Alameda. This filing will automatically effect the removal of this action in its entirety to  
13 this Court for all future proceedings pursuant to 28 U.S.C. § 1446(d).

14 DATED: September 6, 2023

Respectfully submitted,

15 ISMAIL J. RAMSEY  
16 United States Attorney

17 /s/ Jevechius D. Bernardoni  
18 JEVECHIUS D. BERNARDONI  
Assistant United States Attorney

19 Attorneys for Federal Defendants  
20  
21  
22  
23  
24  
25  
26  
27  
28